STATE OF MICHIGAN

COURT OF APPEALS

LORI HATFIELD,

Plaintiff-Appellant,

v

RONALD J. RILEY,

Defendant-Appellee.

UNPUBLISHED
September 29, 2005

No. 253579
Genesee Circuit Court
LC No. 02-072581-NO

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff's sole issue on appeal is that the trial court erred in granting defendant's motion for summary disposition under MCR 2.116(C)(10) because genuine issues of material fact existed regarding whether defendant's statements were provable as false and whether defendant's statements were made with actual malice. We disagree.

On appeal, a trial court's decision with respect to a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In ruling on a summary disposition motion, the trial court must determine whether a genuine issue of material fact exists or whether the moving party is entitled to a judgment as a matter of law. *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Corley v Detroit Board of Education*, 470 Mich 274, 278; 681 NW2d 342 (2004) (internal citation omitted). In evaluating such a motion, the trial court considers "the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." *Corley supra* at 278. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.* All reasonable inferences must be resolved in favor of the nonmoving party. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995). When reviewing a defamation claim, an appellate court must independently examine the record to ensure against forbidden intrusions into free expression. *Mino v Clio School District*, 255 Mich App 60, 72; 661 NW2d 586 (2003).

A communication is defamatory if it "tends to so harm the reputation of an individual that it lowers the individual's reputation in the community or it deters others from associating or dealing with the individual." *Mino, supra,* p 72 (internal citation omitted). To establish a claim of defamation, a plaintiff must show:

> (1) a false or defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting to at least negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm . . . or the existence of special harm caused by publication . . . . [*Id.*]

A statement must be provable as false to be actionable. *Id.* at 77. The statement cannot merely be a subjective opinion that is not objectively verifiable. *Id.* For example, the statement "'In my opinion Mayor Jones is a liar,'" would be potentially actionable, while the statement 'In my opinion Mayor Jones shows his abysmal ignorance by accepting the teaching of Marx and Lenin' would not be actionable." *Ireland v Edwards,* 230 Mich App 607, 616; 584 NW2d 632 (1998). "[A]pparently . . . these examples . . . illustrate the difference between an objectively verifiable event, such as lying, and a subjective assertion like 'shows his abysmal ignorance . . . .'" *Id.*

Plaintiff has failed to demonstrate that defendant's statements were provable as false. Many of the alleged defamatory statements, read in context, could not reasonably be understood as stating actual facts about plaintiff. Plaintiff contends that two articles on defendant's website and an editorial piece submitted to a local newspaper were defamatory. First, plaintiff contends that an article entitled "The Sin" falsely alleged that plaintiff was a sinner and that she collaborated with others to prevent defendant's daughter from obtaining the education she was entitled to by law.

Defendant placed an article on his website entitled "The Sin," chronicling an incident during which defendant believed plaintiff singled out his family and mistreated his daughter. Defendant's daughter was a special needs child. Because defendant had not picked up a large order of Girl Scout cookies his daughter ordered, he was asked to pay for an otherwise free event. The article on defendant's website indicated that plaintiff had been working with defendant's daughter for a period of two years and was well aware of his daughter's limitations. Defendant wrote that plaintiff had become "the instrument of . . . disreputable conduct against [defendant's daughter]" and that plaintiff's actions were "egregious" and "premeditated." Defendant also asserted that plaintiff and many of her colleagues "collaborated to marginalize [his] family in an attempt to cover her tracts [sic]" and that "there [were] repeated attempts to force [his family] to allow plaintiff to directly supervise [defendant's daughter]." Defendant asserted that those actions resulted in defendant's daughter "not receiving help she need[ed] and [was] entitled to by law."

The record indicates that plaintiff did in fact work with defendant's daughter for a period of two years. She was a Brownie troop leader for defendant's daughter. Therefore, defendant's statement in this regard is true. Defendant's remaining statements in the article regarding plaintiff are defendant's subjective opinion and merely "rhetorical hyperbole." *Ireland, supra,* p 618 (internal citation omitted). It is well settled that statements that are merely "rhetorical hyperbole" or constitute a "vigorous epithet" are not actionable. *Id.* (internal citation omitted). Although defendant entitled the article "The Sin," even the most careless reader must have perceived that the title was no more than rhetorical hyperbole or a vigorous epithet used by

defendant to characterize plaintiff's treatment of defendant's daughter and the middle school's treatment of his daughter. *Id.*

The record indicates that defendant's daughter enrolled in summer classes at Torrey Hill Middle School ("Torrey Hill") the summer following the incident regarding the cookies. Defendant's daughter was assigned to be in plaintiff's class for at least a portion of the time she was enrolled in the school. Defendant called to request that his daughter be reassigned to another teacher. He was informed that his daughter would be enrolled in plaintiff's class or not enrolled in classes at all. Defendant's daughter missed half of the summer school because of the school's refusal to comply with defendant's request. Defendant's statement that there were repeated attempts to force his family to allow plaintiff to supervise his daughter is not without support in the record and not provable as false. Defendant was informed that his daughter would be enrolled in plaintiff's class or not enrolled in classes at all. Defendant believed that the school did not attend to his daughter's special needs when she was forced to miss half of the summer program because of the school's refusal to reassign her to another class. Therefore, defendant's assertion that his daughter was not receiving the help that she needed or was entitled to by law was merely his subjective opinion based on the summer school incident. *Mino, supra,* p 77.

Defendant placed another article on his website. The article gave Torrey Hill a grade of D+ for its performance while teaching defendant's older daughter. Defendant wrote that he was considering sending his younger daughter, the daughter involved in the Brownie incident with plaintiff, to a charter school. Defendant also claimed that twenty percent of Torrey Hill's faculty consisted of "DUD teachers." Defendant singled out two "exceptional DUDs," Mrs. Cowen and Mr. Gillespie. Defendant also pointed out the high turnover rate for principals at Torrey Hill. Defendant ended the article with the following:

> And last, Torrey Hill Middle school [sic] has the distinction of hosting [plaintiff], a special education teacher who has demonstrated judgment every bit as poor as any of us who have sheparded [sic] a child through adolescence have seen.

Plaintiff contends that defendant called her a "DUD" as a special education teacher. However, defendant merely asserts that plaintiff has demonstrated "judgment every bit as poor" as anyone who has supervised a child. Contrary to plaintiff's assertion, when read in context, defendant does not call plaintiff a "DUD" as a special education teacher. He specifically calls two other faculty members of Torrey Hill "DUDs" and further asserts that twenty percent of the faculty are "DUDs." However, defendant merely questions plaintiff's judgment and gives his opinion regarding her dealings with children.

Even so, defendant's statement regarding plaintiff was not provable as false and was merely a subjective opinion, akin to an opinion commenting on a person's abysmal ignorance in accepting the teachings of Marx and Lenin. *Ireland, supra,* p 617. A question whether someone is a "DUD" teacher is necessarily subjective and not provable as false. *Id.* In cases where statements reasonably cannot be interpreted as stating actual facts about an individual, those statements are protected under the First Amendment. *Lakeshore Community Hospital v Perry,* 212 Mich App 396, 402; 538 NW2d 24 (1995).

Plaintiff also contends that an editorial piece referring a reader to defendant's website gives the reader access to the defamatory statements about plaintiff. The editorial piece in the

local newspaper was entitled "Accountability Lacking." The article mentioned that the Lake Fenton School District, the district in which plaintiff taught, had "far too many dud teachers and dud administrators." Defendant pushed for accountability in the school system and commented on a highly contested bond issue. The end of his editorial piece referred readers to his website and informed readers that he removed his daughters from the Lake Fenton School District. There is no mention of plaintiff in the editorial piece. Plaintiff assumes that persons who read the editorial piece would navigate defendant's website and find the article regarding her. Even so, as discussed previously, the article about plaintiff contained no defamatory material. Therefore, the statements contained in the editorial piece were not defamatory.

Plaintiff's intentional infliction of emotional distress claim is also subject to the aforementioned First Amendment limitations. *Ireland, supra,* p 624. This Court has held that when a plaintiff claims defamation and intentional infliction of emotional distress based on the same statements and a plaintiff cannot establish defamation because of First Amendment limitations, summary disposition is appropriate with regard to the emotional distress claim. *Id.* at 624-625. Therefore, plaintiff's contention that defendant's statements constituted intentional infliction of emotional distress is without merit.

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Bill Schuette